B 2062

L.N. 313 of 2024

CLIMATE ACTION ACT
(CAP. 643)

European Union Greenhouse Gas Emissions Trading System for Buildings, Road Transport and Additional Sectors Regulations, 2024

IN EXERCISE of the powers conferred by article 27 of the Climate Action Act, the Minister responsible for climate action policy and the Minister responsible for justice, after consultation with the Climate Action Authority, have made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the European Union Greenhouse Gas Emissions Trading System for Buildings, Road Transport and Additional Sectors Regulations, 2024.

(2) These regulations provide for the implementation in Malta of the European Union system for greenhouse gas emissions allowance trading established by Directive 2003/87/EC, for the activity listed in Schedule 1 to these regulations. These regulations also transpose Directive 2003/87/EC as amended by Directive (EU) 2023/959.

Interpretation.

2. For the purposes of these regulations and unless the context otherwise requires:

"account holder" means a natural or legal person that holds an account in the Union registry;

Cap. 643.

"Act" means the Climate Action Act;

"allowance" means an allowance to emit one (1) tonne of carbon dioxide equivalent during a specific period, which shall be valid for the purposes of meeting the requirements of these regulations and shall be transferable in accordance with the provisions of these regulations;

"auctioneer" means the Debt Management Directorate within the Treasury Department appointed by the Government to auction allowances on its behalf;

"authorised representatives" means the representatives, nominated by an account holder in respect of an account in the Union registry, to have access to that account and undertake processes relating to that account on behalf of the account

holder;

"Authority" means the Climate Action Authority established by article 9 of the Act;

"cancellation" means the definitive disposal of an allowance by its holder or by the national registry administrator, as may be applicable;

"combustion" means any oxidation of fuels, regardless of the way the heat, electrical or mechanical energy produced by this process is used;

"Commission" means the European Commission;

"confidential information" means any non-public information deemed to be sensitive by the regulated entity and, or, any privileged information falling within the scope of these regulations, disclosed only for promoting and elaborating certain purposes. It shall include, *inter alia*:

(a) trade secrets;

(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or,

(c) information other than trade secrets or information under paragraph (b) concerning a person, organisation or undertaking in respect of their business, professional, commercial or financial affairs;

"Decision (EU) 2015/1814" means Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC;

"deviation" means, in respect of monitoring of annual emissions, the use of a monitoring approach that is different, in full or in part, from the approved monitoring and reporting plan, which use is of a temporary nature;

"Directive 2003/87/EC" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/

EC;

"Directive (EU) 2023/959" means Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emissions trading scheme;

"emissions" means the release of greenhouse gases specified in respect of the activity listed in Schedule 1;

"EU ETS" means the European Union Emissions Trading System established by Directive 2003/87/EC;

Cap. 382.

"fuel" means any energy product referred to in the Fourth Schedule to the Excise Duty Act, including the fuels listed in the said Schedule, as well as any other product intended for use, offered for sale or used as motor fuel or heating fuel as specified in the said Schedule, including for the production of electricity;

"greenhouse gases" means the gases listed in Schedule 2 and other gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

"greenhouse gas emissions permit" means the permit issued pursuant to regulation 6;

"person" means any natural or legal person;

"the public" means one or more persons, associations, organisations or groups of persons;

"regulated entity" means any natural or legal person, except for any final consumer of the fuels, that engages in the activity listed to in Schedule 1 and that falls within one of the following categories:

Cap. 382.

(a) where the fuel passes through an authorised tax warehouse as defined in article 2 of the Excise Duty Act, the authorised tax warehouse keeper as defined in article 2 of the Excise Duty Act, liable to pay the excise duty which has become chargeable pursuant to article 8 of the Excise Duty Act;

(b) if paragraph (a) is not applicable, any other person liable to pay the excise duty which has become

chargeable pursuant to article 8 of the Excise Duty Act or the first subparagraph of Article 21(5) of Council Directive 2003/96/EC in respect of the fuels covered by Chapter IVa of Directive 2003/87/EC;

(c) if paragraphs (a) and (b) are not applicable, any other person that has to be registered by the Commissioner for Revenue for the purpose of being liable to pay the excise duty, including any person exempt from paying the excise duty, as referred to in the fourth subparagraph of Article 21(5) of Directive 2003/96/EC; and

(d) if paragraphs (a), (b) and (c) are not applicable, or if several persons are jointly and severally liable for payment of the same excise duty, any other person designated by the Commissioner for Revenue;

"release for consumption" means release for consumption as defined in article 2 of the Excise Duty Act; Cap. 382.

"surrender" means the accounting of an allowance by a regulated entity against the verified emissions of the regulated entity;

"tonne of carbon dioxide equivalent" means one (1) metric tonne of carbon dioxide (CO2) or an amount of any other greenhouse gas listed in Schedule 2 with an equivalent global-warming potential;

"Union" and "European Union" shall have the same meaning as assigned to “the European Union” in the European Union Act; Cap. 460.

"Union registry" means the registry established and maintained in accordance with Article 19 of Directive 2003/87/EC for the execution of processes pertaining to the maintenance of holding accounts and the allocation, surrender and cancellation of allowances;

"verifier" means a legal person or another legal entity carrying out verification activities pursuant to these regulations and accredited by a national accreditation body pursuant to Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 and relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC, or natural person otherwise

authorised, without prejudice to Article 5(2) of Regulation (EC) 765/2008, at the time a verification report is issued.

Applicability.

3. These regulations shall apply to regulated entities carrying out the activity listed in Schedule 1 resulting in emissions of the greenhouse gases specified in the said Schedule in respect of that activity, and to any other relevant legal bodies on which these regulations place any obligations.

Greenhouse gas emissions permits.

4. (1) From 1 January 2025, no regulated entity shall carry out the activity listed in Schedule 1 resulting in emissions specified in relation to that activity unless such regulated entity holds a permit issued by the Authority in accordance with regulation 6.

(2) Where a regulated entity carries out the activity listed in Schedule 1 without holding a permit in accordance with sub-regulation (1), the regulated entity shall be liable to the imposition of an administrative penalty:

(a) when emissions of a regulated entity during that year are equal to, or less than fifty thousand (50,000) tonnes carbon dioxide equivalents, of ten thousand euro (€10,000), and one hundred euro (€100) for each day of non-compliance from the date of a notice given by the Authority to the regulated entity;

(b) when emissions of a regulated entity during that year are more than fifty thousand (50,000) tonnes of carbon dioxide equivalents, of fifty thousand euro (€50,000), and three hundred euro (€300) for each day of non-compliance from the date of a notice given by the Authority to the regulated entity.

(3) For the purposes of determining the administrative penalty under sub-regulation (2), when the emissions of the regulated entity are not known or are not reported or where the Authority is satisfied that there is no reasonable possibility that the quantity of emissions shall be reported by the regulated entity, the Authority may determine itself the emissions of that regulated entity. The Authority shall use the best available data and ensure that a conservative estimate is made that does not underestimate emissions. The regulated entity shall be liable to the imposition of an administrative penalty equal to the amounts established in sub-regulation (2) in respect of the quantity of emissions estimated in accordance with this sub-regulation.

(4) A permit issued by the Authority in accordance with sub-regulation (1) shall be valid for the duration of the performance of an activity listed in Schedule 1 in respect of which the permit is issued, unless the permit is surrendered in accordance with regulation 8 or revoked in accordance with regulation 9.

(5) The Authority shall ensure that permits issued by it in accordance with sub-regulation (1) shall be made publicly available.

Application for greenhouse gas emissions permit.

5. (1) The regulated entity shall apply to the Authority for a greenhouse gas emissions permit.

(2) The regulated entity shall submit an application for a greenhouse gas emissions permit. The application shall be submitted at least one hundred and twenty (120) days before the commencement of the activity listed in Schedule 1 in respect of which the application for a permit is to be submitted, unless otherwise agreed in writing between the applicant and the Authority or, in the case of a regulated entity that already performs the activity listed in Schedule 1 before 1 January 2025, as early as possible before that date.

(3) An application made to the Authority for a greenhouse gas emissions permit shall include, *inter alia*, the following:

(a) information as may be requested by the Authority about the regulated entity;

(b) a description of the type of fuels that the regulated entity releases for consumption and which are used in the sectors referred to in Schedule 1 and the means through which it releases those fuels for consumption;

(c) a description of the end use of the fuels released for consumption for the activity referred to in Schedule 1;

(d) a description of the measures planned to monitor and report emissions in accordance with regulations 12 and 13;

(e) any other appropriate information requested by the Authority;

(f) any other information that the applicant wants the Authority to take into account when considering its application;

(g) a non-technical summary of the details referred to in paragraphs (a) to (f) of this sub-regulation.

Issuance of a greenhouse gas emissions permit, conditions for this and contents of the permit.

6. (1) The Authority shall issue a greenhouse gas emissions permit granting authorization to the regulated entity for the activity listed in Schedule 1, if it is satisfied that the regulated entity is capable of complying with the requirements of these regulations and the conditions of the permit. A permit shall be issued within a period of ninety (90) days from the date on which the Authority receives the application containing a complete set of information in accordance

with sub-regulation (3) of regulation 5, unless otherwise agreed in writing between the regulated entity and the Authority.

(2) The Authority shall, when issuing a greenhouse gas emissions permit, ensure that the permit includes, *inter alia*, the following:

(a) the name and address of the regulated entity;

(b) a description of the means by which the regulated entity releases fuels for consumption in the sectors listed in Schedule 1;

(c) a list of fuels that the regulated entity releases for consumption in the sectors listed in Schedule 1;

(d) a reference to monitoring, reporting and verification requirements including the requirement to have a monitoring plan approved by the Authority;

(e) an obligation to report verified emissions of greenhouse gases specified for the activity listed in Schedule 1 for each calendar year, within three (3) months following the end of that calendar year;

(f) an obligation to surrender allowances equal to the total emissions of the regulated entity from the activity listed in Schedule 1 in each calendar year by 31st May of the following calendar year;

(g) any other conditions that the Authority considers appropriate to ensure compliance with the requirements of these regulations.

(3) The Authority may, at any time, review a greenhouse gas emissions permit issued to a regulated entity and make amendments to the permit as deemed appropriate and issue an updated permit:

Provided that the Authority shall inform the regulated entity covered by the permit of such amendments as early as possible prior to the issuance of an updated permit.

(4) The Authority may, at any time, vary the conditions of a permit in such a manner as it may deem fit, and issue an updated permit:

Provided that it shall inform the regulated entity covered by the permit of such variations as early as possible prior to the issuance

of an updated permit.

Changes relating to regulated entities.

7. (1) A regulated entity to which a greenhouse gas emissions permit has been issued shall notify the Authority of:

(a) any change planned to the nature of its activity; or

(b) any change planned to the fuels it releases for consumption:

Provided that any such notification shall be made in writing at least one hundred and twenty (120) days before such a change is effectively to take place.

(2) The Authority shall, where appropriate, update the greenhouse gas emissions permit accordingly, within a period of ninety (90) days from the date on which the Authority receives a notification in accordance with sub-regulation (1), unless otherwise agreed in writing between the regulated entity and the Authority.

(3) Where there is a change in the identity of the regulated entity, the Authority shall update the permit to include the name and address of the new regulated entity:

Provided that the Authority shall be notified by the regulated entity, in writing, of the change in the identity of the regulated entity at least sixty (60) days before such a change is effectively to take place.

(4) A regulated entity that allows the coming into effect of changes listed under sub-regulation (1) without notifying the Authority of such changes in accordance with this regulation, shall be liable to the imposition of an administrative penalty of five thousand euro (€5,000).

(5) When a change in the name of the regulated entity comes into effect without such a change having been notified to the Authority in accordance with sub-regulation (3), the regulated entity shall be liable to the imposition of an administrative penalty of one thousand euro (€1,000).

(6) The Authority shall notify the national registry administrator of any changes made to a permit in accordance with this regulation. The national registry administrator shall ensure that any changes required are made to the account relating to the regulated entity for which the changes to the permit relate, so as to reflect such changes.

Surrender of greenhouse gas emissions permits.

8. (1) A regulated entity that ceases to carry out the activity listed in Schedule 1 shall surrender the permit.

(2) An application for the surrender of a permit shall be submitted to the Authority, in writing, by not later than thirty (30) days from the date on which the regulated entity has ceased to carry out the activity to which the greenhouse gas emissions permit relates.

(3) An application for the surrender of a permit shall include the following:

(a) the name and address of the applicant;

(b) the name and address of the regulated entity to which the greenhouse gas emissions permit relates;

(c) the date on which the activity has ceased being carried out.

(4) The Authority shall process an application for the surrender of a permit submitted in accordance with this regulation within thirty (30) days from the receipt of the application. The Authority shall issue a notice of surrender of a permit, which shall include the following conditions:

(a) a requirement to monitor, and report by the date that may be specified in the notice of surrender of a permit, and in accordance with these regulations, verified emissions for the year during which the notice becomes effective up to the date on which the notice becomes effective;

(b) a requirement to surrender, by the date that may be specified in the notice of surrender of a permit, and in accordance with these regulations, a quantity of allowances equal to the verified emissions reported under paragraph (a);

(c) a requirement to surrender, by the date that may be specified in the notice of surrender of a permit, and in accordance with these regulations, a quantity of allowances equal to verified emissions not covered by surrendered allowances in respect of years previous to the year when the notice of surrender of a permit becomes effective.

Provided that monitoring, reporting and verification of emissions referred to in paragraph (a) shall be carried out in accordance with monitoring, reporting and verification requirements in the greenhouse gas emissions permit to which the application to surrender a permit relates.

(5) The permit shall cease to have effect from the date on which the notice for surrender of a permit becomes effective in so far as it authorises the carrying out of an activity covered by the permit:

Provided that any conditions in the permit shall remain in effect until the Authority is satisfied that the requirements under sub-regulation (4) have been complied with or that there is no reasonable possibility of further allowances being surrendered by the regulated entity to which the notice for surrender of a permit relates.

(6) The Authority shall notify the national registry administrator of any application for the surrender of a permit made to it and the coming into effect of such surrender. The national registry administrator shall ensure that any changes required are made to the account or accounts relating to the regulated entity to which the surrender of a permit relates so as to reflect the surrender of the permit.

(7) When a permit is surrendered without sufficient allowances having been surrendered in accordance with regulation 17 to cover all emissions reported in respect of the activity listed in Schedule 1, the regulated entity shall be liable to the imposition of an administrative penalty of one hundred euro (€100) for each tonne of carbon dioxide equivalent emitted for which the regulated entity has not surrendered allowances.

(8) From the 1st January, 2028 where, for the year in which regulated entity surrendering a permit does not surrender sufficient allowances, the annual average Harmonised European Index of Consumer Prices published shows a percentage increase as compared to the latest Harmonised European Index of Consumer Prices published for the previous year, the administrative penalty shall be increased by the same percentage. The administrative penalty as revised pursuant to this sub-regulation shall apply to subsequent years unless further increased in accordance with the Harmonized European Index of Consumer Prices. For the purposes of this sub-regulation, each allowance not surrendered by the regulated entity for a tonne of carbon dioxide equivalent emitted shall be considered as a separate breach.

(9) For the purposes of determining the total administrative penalty under sub-regulation (7), where the emissions of the regulated entity are not known, or are not reported, or where the Authority is satisfied that there is no reasonable possibility that a verified quantity of emissions shall be reported by the regulated entity covered by the permit to be surrendered, the Authority may itself determine the emissions from the activity performed by the regulated entity. The Authority shall use the best available data and ensure that a

conservative estimate is made that does not underestimate emissions. The regulated entity shall be liable to the imposition of an administrative penalty equal to the amount established in sub-regulation (7) in respect of the quantity of emissions estimated in terms of this sub-regulation.

Revocation of greenhouse gas emissions permits.

9. (1) The Authority may, at any time, revoke a greenhouse gas emissions permit issued to a regulated entity.

(2) The Authority may revoke a permit in accordance with sub-regulation (1) by issuing a notice of revocation of a permit to the regulated entity, which shall include the following:

(a) information clearly identifying the regulated entity covered by the notice;

(b) the reasons for the revocation of the greenhouse gas emissions permit;

(c) the date on which the notice takes effect, which shall not be earlier than fifteen (15) days from the date of the notice;

(d) the requirement for the regulated entity to monitor and report, by the date that may be specified in the notice of revocation of a permit, and in accordance with these regulations, verified emissions for any years in which the regulated entity performed the activity covered by the permit and for which it did not submit a verified emissions report; and

(e) the requirement for the regulated entity to surrender, by the date that may be specified in the notice of revocation of a permit, and in accordance with these regulations, a quantity of allowances equal to the amount of emissions reported, for any years in which the regulated entity performed the activity covered by the permit and in respect of which it did not surrender allowances.

(3) The permit shall cease to have effect from the date on which the notice for revocation of a permit becomes effective in so far as it authorises the carrying out of an activity by the regulated entity:

Provided that any conditions in the permit shall remain in effect until the Authority is satisfied that the requirements under sub-regulation (2) have been complied with or that there is no reasonable possibility of further allowances being surrendered by the regulated entity to which the notice for revocation of a permit relates.

(4) The Authority shall notify the national registry

administrator of any revocation of a permit and the coming into effect of such revocation. The national registry administrator shall ensure that any changes required are made to the account relating to the regulated entity to which the revocation of a permit relates so as to reflect the revocation of the permit.

(5) When a permit is revoked without sufficient allowances having been surrendered in accordance with regulation 17 to cover all emissions reported in respect of the activity listed in Schedule 1, the regulated entity shall be liable to the imposition of an administrative penalty of one hundred euro (€100) for each tonne of carbon dioxide equivalent emitted for which the regulated entity has not surrendered allowances.

(6) From the 1st January, 2028 where, for the year in which the permit is revoked, the regulated entity does not surrender sufficient allowances, the annual average Harmonised European Index of Consumer Prices published shows a percentage increase as compared to the latest Harmonised European Index of Consumer Prices published for the previous year, the administrative penalty shall be increased by the same percentage. The administrative penalty as revised in accordance with this sub-regulation shall apply to subsequent years unless further increased in accordance with the Harmonised European Index of Consumer Prices. For the purposes of this sub-regulation, each allowance not surrendered by the regulated entity for a tonne of carbon dioxide equivalent emitted shall be considered as a separate breach.

(7) For the purposes of determining the total administrative penalty under sub-regulation (5), where the emissions of the regulated entity are not known, or are not reported, or when the Authority is satisfied that there is no reasonable possibility that a verified quantity of emissions shall be reported by the regulated entity covered by the permit to be surrendered, the Authority may itself determine the emissions from the activities performed in the installation. The Authority shall use best available data and ensure that a conservative estimate is made that does not underestimate emissions. The regulated entity shall be liable to the imposition of an administrative penalty equal to the amount established in sub-regulation (5) in respect of the quantity of emissions estimated in accordance with this sub-regulation.

Auctioning of allowances.

10. (1) The quantity of allowances as determined for Malta in respect of the activity listed in Schedule 1 in accordance with Directive 2003/87/EC, shall be auctioned by the auctioneer in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(2) The auctioneer shall act in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

Union registry.

11. (1) Allowances shall be held by a regulated entity in the Union registry. A regulated entity shall have a regulated entity holding account in the Union registry.

(2) The national registry administrator shall perform its functions in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC:

Provided that in respect of regulated entity holding accounts, the Authority shall act as the national registry administrator:

Provided further that where the Authority acts as the national registry administrator there shall be no conflict of interest between the Authority and holders of regulated entity holding accounts.

(3) A request to open a regulated entity holding account shall be made by the Authority or the regulated entity to the national registry administrator.

(4) A request for the opening of a regulated entity holding account shall include all information required by the national registry administrator in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC and any requirements and terms and conditions made by the national registry administrator.

(5) The national registry administrator shall open and administer a regulated entity holding account for a regulated entity in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/ 87/EC and any terms and conditions it may make. The national registry administrator shall not open an account unless it is satisfied that the request is in accordance with the requirements of this regulation.

(6) A regulated entity holding account holder and its nominated authorised representatives shall act in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC and any terms and conditions made by the national registry administrator.

(7) Where a regulated entity fails to comply with any requirements of decisions and regulations adopted by the Commission in respect of registries or terms and conditions made by the national

registry administrator in respect of registries, the national registry administrator may prevent the transfer of allowances or other accounting units into or out of a regulated entity holding account held by that regulated entity until any non-compliance is rectified:

Provided that the national registry administrator shall not prevent the surrender or cancellation of allowances in accordance with regulation 17.

Monitoring of annual emissions.

12. (1) A regulated entity shall submit to the Authority a monitoring plan setting out measures to monitor and report emissions of greenhouse gases specified in respect of the activities carried out in that installation as listed in Schedule 1. These measures shall be in accordance with:

(a) the principles set out in Schedule 3;

(b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and

(c) any other requirements made by the Authority in respect of monitoring and reporting of emissions of greenhouse gases from activities listed in Schedule 1.

(2) The regulated entity shall submit a monitoring plan for the first time to the Authority at the same time as an application is made for a greenhouse gas emissions permit in accordance with regulation 4.

(3) The monitoring plan submitted by the regulated entity pursuant to sub-regulation (1) shall be approved by the Authority if it is satisfied that the plan is in accordance with the requirements set out under this regulation. The Authority may request from the regulated entity any additional information it deems appropriate for the approval of the plan.

(4) The regulated entity shall notify the Authority of any deviations from the monitoring plan that may occur at any time after the approval of the plan by the Authority:

Provided that the Authority shall be notified of any deviation from the plan:

(a) as early as possible before the deviation occurs, if the deviation is known to the regulated entity, or is made known to the regulated entity prior to its occurrence; or

(b) immediately after the deviation occurs if the occurrence of the deviation is not known to the regulated entity,

or is not made known to the regulated entity before, or at the time of its occurrence.

(5) The regulated entity shall maintain a documented record, which shall include information in accordance with requirements that may be established by the Authority, of any deviations that occur during a monitoring year and shall submit such record to the Authority together with the annual emissions report submitted pursuant to regulation 13.

(6) The regulated entity shall regularly check if the approved monitoring plan reflects the nature and function of the installation. The regulated entity may at any time after the approval of the monitoring plan, submit to the Authority proposed modifications that have to be made to the plan, in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC. The regulated entity shall maintain a documented record of all modifications to the monitoring plan. No proposed significant modifications to an approved plan shall be valid without the approval of the Authority.

(7) Where it deems appropriate, the Authority may request the submission of a revised plan.

(8) The regulated entity shall monitor emissions from the activity listed in Schedule 1 during each monitoring year.

(9) Without prejudice to sub-regulation (4), a regulated entity shall monitor the annual emissions in accordance with the monitoring plan approved by the Authority in accordance with this regulation. The Authority may take any action it deems necessary under these regulations to ensure that an operator is monitoring and reporting annual emissions in accordance with the approved monitoring plan.

(10) The regulated entity shall identify and document reliably and accurately, per type of fuel, the precise quantities of fuel released for consumption which are used for combustion in the sectors referred to in Schedule 1, and the final use of the fuels released for consumption.

(11) The regulated entity shall monitor the quantities of fuels released for consumption, the final use of the fuels released for consumption and emissions from fuels released for consumption in a manner that limits the risk of double counting of emissions from the activity listed in Schedule 1 and the emissions from the activities listed in Schedule 1 of the European Union Greenhouse Gas Emissions Trading System for Stationary Installations Regulations, Schedule 1 of the European Union Greenhouse Gas Emissions Trading System for Aviation Regulations and Schedule 1 of the European Union Greenhouse Gas Emissions Trading System for Maritime Transport Regulations.

S.L. 643.02.
S.L. 643.03.
L.N. 316 of 2024.

(12) Where the annual emissions of a regulated entity, corresponding to the quantities of fuels released for consumption by the regulated entity are less than one thousand (1,000) tonnes of carbon dioxide equivalent, the Authority may allow the use of simplified monitoring measures in accordance with decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

13. (1) A regulated entity shall report annual emissions, monitored in accordance with regulation 12, for each monitoring year in accordance with:

Reporting of verified annual emissions.

(a) the principles set out in Schedule 3; and

(b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and

(c) any other requirements made by the Authority in respect of reporting of emissions of greenhouse gases from activities listed in Schedule 1.

(2) The regulated entity shall submit to the Authority an annual report on the emissions from the activity listed in Schedule 1 for a monitoring year by not later than 30th April of the subsequent year.

(3) The report submitted by a regulated entity pursuant to sub-regulation (2) shall be verified by a verifier in accordance with:

(a) the principles set out in Schedule 4; and

(b) relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC; and

(c) any other requirements made by the Authority in respect of verification of annual emission reports for emissions from the activity listed in Schedule 1.

(4) A verification report shall be submitted by the regulated entity to the Authority with an annual emissions report submitted. The regulated entity shall also enter the quantity of emissions reported in the verified annual emissions report for a monitoring year into the Union Registry, by 30th April of the subsequent year.

(5) Where a regulated entity fails to submit an annual emissions report for a monitoring year that has been verified as satisfactory by the 30th April of the subsequent year, the national registry administrator shall not allow the transfer of allowances or any other accounting units out of the regulated entity holding account until a report from the regulated entity in respect of that installation has been verified as satisfactory:

Provided that the national registry administrator shall not prevent the surrender or cancellation of allowances in accordance with regulation 17.

(6) The regulated entity for which an annual emissions report is to be verified shall notify the Authority and the National Accreditation Board – Malta of the planned date and place of the verification and the identity of the verifier who shall perform the verification, by not later than thirty (30) days prior to the date when the verification is to be performed.

(7) A regulated entity holding a permit in accordance with regulation 4 on 1st January 2025 shall report its historical emissions for the year 2024 by 30th April 2025. The emissions shall be reported in accordance with the requirements set out in this regulation.

(8) Where the annual emissions of a regulated entity, corresponding to the quantities of fuels released for consumption by the regulated entity are less than one thousand (1,000) tonnes of carbon dioxide equivalent, the Authority may allow the use of simplified reporting or verification measures in accordance with decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

Competent authority checks of verified annual emissions reports and determination of emissions in case of non-reporting or non-verification.

14. (1) The Authority may perform any checks it deems necessary to ensure that a report submitted by a regulated entity is in accordance with regulation 13.

(2) The Authority shall not accept a report of annual emissions which has not been verified as satisfactory or for which a verification report has not been submitted. The Authority shall inform the regulated entity, in writing or through other documented means, of its decision. Where it deems necessary, the Authority may require the

submission of a revised annual emissions report. The revised annual emissions report shall be verified in accordance with regulation 13. Where necessary the regulated entity shall also update the amount of emissions entered into the Union Registry.

(3) Where, in respect of any monitoring year, a regulated entity has not submitted a verified annual emissions report in accordance with regulation 13, or where it is deemed that the regulated entity has not submitted an annual emissions report which is in accordance with the requirements set out in regulation 13, the Authority may, unless there is written agreement between the Authority and the regulated entity providing otherwise, determine itself the emissions for the activity listed in Schedule 1 performed by that regulated entity for that monitoring year. The Authority shall use the best available data and ensure that a conservative estimate is made that does not underestimate emissions. When annual emissions are determined under this sub-regulation, the Authority shall consider the requirements set out in Schedules 3 and 4:

Provided that the Authority shall notify the regulated entity of the emissions as determined and the methodology used to determine such emissions:

Provided further that the Authority shall enter the amount of emissions as determined in accordance with this sub-regulation into the Union Registry.

Administrative penalties relating to monitoring and reporting of annual emissions.

15. (1) A regulated entity that fails to submit a monitoring plan in accordance with regulation 13, shall be liable to the imposition:

(a) for a regulated entity for which emissions for the first year of performing an activity covered by these regulations during the period for which the plan relates are equal to or less than fifty thousand (50,000) tonnes carbon dioxide equivalents, of an administrative penalty of five thousand euro (€5,000) and, or, one hundred euro (€100) for each day of non-compliance, from the date of a notice given by the Authority to the regulated entity;

(b) for a regulated entity for which emissions for the first year of performing an activity covered by these regulations during the period for which the plan relates are more than fifty thousand (50,000) tonnes of carbon dioxide equivalents and equal to or less than five hundred thousand (500,000) tonnes of carbon dioxide equivalent, to an administrative penalty of ten thousand euro (€10,000) and, or three hundred euro (€300) for each day of non-compliance, from the date of a notice given by

the Authority to the regulated entity.

(2) A regulated entity that fails to monitor annual emissions during a year in accordance with regulation 12 or fails to submit a verified annual emissions report in respect of a year in accordance with regulation 13, shall be liable to the imposition:

(a) for a regulated entity for which emissions for that year are equal to, or less than fifty thousand (50,000) tonnes carbon dioxide equivalents, to an administrative penalty of five thousand euro (€5,000) and, or one hundred euro (€100) for each day of non compliance, from the date of a notice given by the Authority to the regulated entity;

(b) for a regulated entity for which emissions for that year are more than fifty thousand (50,000) tonnes of carbon dioxide equivalents and equal to, or less than five hundred thousand (500,000) tonnes carbon dioxide equivalents, of an administrative penalty of ten thousand euro (€10,000) and, or three hundred euro (€300) for each day of non-compliance, from the date of a notice given by the Authority to the regulated entity.

(3) For the purposes of determining the administrative penalty under this regulation, when the emissions of the regulated entity are not known or where the Authority is satisfied that there is no reasonable possibility that a verified quantity of emissions shall be reported by the regulated entity, the Authority may itself determine the emissions from the activities performed in that installation. The Authority shall use the best available data and ensure that a conservative estimate is made that does not underestimate emissions. The regulated entity shall be liable to the imposition of an administrative penalty equal to the amounts established in sub-regulations (1) and (2) in respect of the quantity of emissions estimated by the Authority in accordance with this sub-regulation.

Other reporting.

16. (1) From 1st January 2028 and until 2030, by 30th April of each year, a regulated entity shall report to the Authority the average share of costs relating to the surrender of allowances in respect of the previous calendar year, which it has passed on to consumers.

(2) The report submitted by a regulated entity pursuant to sub-regulation (1) shall be in accordance with relevant decisions and regulations adopted by the Commission in accordance with Directive 2003/87/EC.

Surrender and cancellation of allowances.

17. (1) From 1st January 2028 a regulated entity shall, by 31st May of each year, surrender a number of allowances that is equal to the total emissions of that regulated entity during the preceding calendar year as verified in accordance with regulation 13, or as determined by the Authority in accordance with regulation 14.

(2) Allowances issued by a competent authority of another Member State shall be recognized by the Authority for the purpose of meeting the obligations of a regulated entity under sub-regulation (1).

(3) Where necessary, and for as long as is necessary, in accordance with relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC, a regulated entity shall not surrender allowances that are issued by a Member State in respect of which there are obligations arising from Directive 2003/87/EC which are lapsing.

(4) The national registry administrator shall cancel allowances surrendered in accordance with sub-regulation (1).

(5) The national registry administrator shall cancel allowances at any time at the request of a regulated entity holding those allowances.

(6) Surrender and cancellation of allowances shall be carried out in accordance with the relevant decisions and regulations adopted by the Commission pursuant to Directive 2003/87/EC.

(7) The Authority shall publish the name of any regulated entity which is in breach of the requirement to surrender sufficient allowances under sub-regulation (1).

(8) A regulated entity that does not surrender sufficient allowances as required under sub-regulations (1) to cover its emissions during the preceding year, or that has not yet surrendered allowances to cover its emissions during any previous year, shall be liable to the imposition of an administrative penalty of one hundred euro (€100) for each tonne of carbon dioxide equivalent emitted for which the regulated entity has not surrendered allowances.

(9) From the 1st January 2028 where, for the year in which a regulated entity does not surrender sufficient allowances to cover emissions during that year in accordance with sub-regulation (1), the annual average Harmonized European Index of Consumer Prices published indicates a percentage increase as compared to the latest Harmonized European Index of Consumer Prices published for the previous year, the administrative penalty shall be increased by the same percentage. The administrative penalty as revised pursuant to

this sub-regulation shall apply to subsequent years unless further increased in accordance with the Harmonized European Index of Consumer Prices. For the purposes of this sub-regulation, each allowance not surrendered by the regulated entity for a tonne of carbon dioxide equivalent emitted shall be considered as a separate breach.

(10) The imposition of an administrative penalty as prescribed in sub-regulation (8) shall not release the regulated entity from the obligation to surrender an amount of allowances equal to those excess emissions in respect of which the administrative penalty is paid when surrendering allowances in relation to the following calendar year.

(11) Where a regulated entity fails to surrender allowances in accordance with sub-regulation (1), the national registry administrator shall not allow the transfer of allowances or any other accounting units out of the regulated entity holding account opened in respect of that installation until the regulated entity complies with the requirement to surrender allowances:

Provided that the national registry administrator shall not prevent the surrender of allowances in accordance with sub-regulation (1) or the cancellation of allowances in accordance with sub-regulation (5).

Postponement of first surrender obligation in the event of exceptionally high energy prices.

18. Where a decision is taken pursuant to Article 30k of Directive 2003/87/EC, and by way of derogation from sub-regulation (1) of regulation 17, the first surrender of allowances in respect of emissions of a regulated entity from the activity listed in Schedule 1 shall take place by 31st May 2029 in respect of emissions occurring in 2028.

Visibility of source of funding from EU ETS auctioning revenues.

19. A beneficiary of funding of any action or project funded from EU ETS auctioning revenues shall ensure the visibility of such source of funding.

Access to information, disclosure of information and professional secrecy.
S.L. 549.39.

20. Reports of emissions submitted in accordance with regulation 13 shall be made available to the public in accordance with the Freedom of Access to Information on the Environment Regulations:

Cap. 586.

Provided that any access to personal data shall be made in accordance with the Data Protection Act and that information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the applicable laws, regulations, administrative provisions and, or the provisions of the Professional Secrecy Act:

Cap. 377.

Provided further that without prejudice to this regulation and to the obligation which may be imposed on the Authority to disclose any information, the Authority shall not disclose any confidential information or any parts thereof or any other information which should be treated as commercially confidential:

Provided further that any information which shall be treated as commercially confidential shall be made known at all times to the Authority.

Submission of applications, monitoring plans and reports.

21. The Authority may require that submissions of applications, monitoring plans and reports in accordance with these regulations are made in the form and manner and by means of the medium as specified by it.

Revenue from auctioning of allowances.

22. The revenue from the auctioning of allowances, after deducting the audited costs to administer the EU ETS agreed between the Minister responsible for finance and the Authority, shall accrue to the Consolidated Fund.

Right to appeal.

Cap. 490.

23. The Administrative Review Tribunal shall have jurisdiction to hear and determine appeals from decisions of the Authority made under these regulations in terms of the Administrative Justice Act, which appeal shall be filed by not later than twenty (20) days from the service of the said Authority's decision, wherein the aggrieved party shall specify the reasons on the basis of which the said decision of the Authority should be cancelled or modified:

Provided that any party to the proceedings before the Administrative Review Tribunal who feels aggrieved by a decision of the said Tribunal, may appeal to the Court of Appeal on a point of law in accordance with the Code of Organization and Civil Procedure.

Cap. 12.

Consequential amendment. Cap. 490.

L.N. 313 of 2024.

24. Immediately after the last item of the primary legislation in the Second Schedule of the Administrative Justice Act, there shall be added the words "Climate Action Act Cap. 643 Superior/Inferior Competence" and immediately after the last item of the subsidiary legislation of the said Second Schedule there shall be added the words "European Union Greenhouse Gas Emissions Trading System for Buildings, Road Transport and Additional Sectors Regulations S.L. 643.05, Superior/Inferior Competence".

Schedule 1
(regulations 1(2), 2, 4(1), 4(2), 4(4), 5(2), 5(3), 5(3)(b), 5(3)(c), 6(1), 6(2), 6(2)(b), 6(2)(c), 6(2)(e), 6(2)(f), 8(1), 8(7), 9(5), 10(1), 12(1), 12(1)(c), 12(8), 12(10), 12(11), 13(1), 13(1)(c), 13(2), 13(3), 13(3)(c), 14(3), 18)

Activity for which these regulations apply

Activity	Greenhouse gases
1. Release for consumption of fuels which are used for combustion in the sectors of buildings and road transport and additional sectors. This activity shall not include: (a) the release for consumption of fuels used in the activities listed in Schedule 1 of European Union Greenhouse Gas Emissions Trading System for Stationary Installations Regulations, except if used for combustion in the activities of transport of greenhouse gases for geological storage as set out in that Schedule or if used for combustion in installations excluded under regulation 27 of European Union Greenhouse Gas Emissions Trading System for Stationary Installations Regulations; (b) the release for consumption of fuels for which the emission factor is zero (0); (c) the release for consumption of hazardous or municipal waste used as fuel.	Carbon dioxide (CO_2)

S.L. 643.02.

2. The sectors of buildings and road transport shall correspond to the following sources of emissions, defined in 2006 IPCC Guidelines for National Greenhouse Gas Inventories, with the necessary modifications to those definitions as follows:

(a) Combined Heat and Power Generation (CHP) (source category code 1A1a ii) and Heat Plants (source category code 1A1a iii), insofar as they produce heat for categories under (c) and (d) of this item, either directly or through district heating networks;

(b) Road Transportation (source category code 1A3b), excluding the use of agricultural vehicles on paved roads;

(c) Commercial and, or Institutional (source category code 1A4a);

(d) Residential (source category code 1A4b).

3. Additional sectors shall correspond to the following sources of emissions, defined in 2006 IPCC Guidelines for National Greenhouse Gas Inventories:

(a) Energy industries (source category code 1A1), excluding the categories defined under item 2(a) of this Schedule;

(b) Manufacturing Industries and Construction (source category code 1A2).

Schedule 2
(regulation 2)
Greenhouse gases

Carbon dioxide (CO_2)

Methane (CH_4)

Nitrous Oxide (N_2O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF_6)

Schedule 3
(regulations 12(1)(a) and 13(1)(a))
Principles for monitoring and reporting of annual emissions

Monitoring of emissions

Emissions shall be monitored by calculation.

Calculation

Emissions shall be calculated using the following formula:

Fuel released for consumption × emission factor

Fuel released for consumption shall include the quantity of fuel released for consumption by the regulated entity.

Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of those Guidelines, shall be used unless fuel-specific emission factors identified by independent accredited laboratories using accepted analytical methods are more accurate.

A separate calculation shall be made for each regulated entity, and for each fuel.

Reporting of emissions

Each regulated entity shall include the following information in its report:

A. Data identifying the regulated entity, including:

— name of the regulated entity;

— its address, including postcode and country;

— type of the fuels it releases for consumption and its activities through which it releases the fuels for consumption, including the technology used;

— address, telephone, fax and email details for a contact person; and

— name of the owner of the regulated entity, and of any parent company.

B. For each type of fuel released for consumption and which is used for combustion in the sectors referred to in Schedule 1, for which emissions are calculated:

— quantity of fuel released for consumption;

— emission factors;

— total emissions;

— end uses of the fuel released for consumption; and

— uncertainty.

Schedule 4
(regulation 13)
Principles for verification of annual emissions

General Principles

1. Emissions corresponding to the activity referred to in Schedule 1 shall be subject to verification.

2. The verification process shall include consideration of the report pursuant to regulation 13 and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, and in particular:

(a) the reported fuels released for consumption and related calculations;

(b) the choice and the employment of emission factors;

(c) the calculations leading to the determination of the overall emissions.

3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the regulated entity to prove that:

(a) the reported data are free of inconsistencies;

(b) the collection of the data has been carried out in accordance with the applicable scientific standards; and

(c) the relevant records of the regulated entity are complete and consistent.

4. The verifier shall be given access to all sites and information in relation to the subject of the verification.

5. The verifier shall take into account whether the regulated entity is registered under the Union Eco-management and Audit scheme (EMAS).

Methodology

Strategic analysis

6. The verification shall be based on a strategic analysis of all the quantities of fuels released for consumption by the regulated entity. This requires the verifier to have an overview of all the activities through which the regulated entity is releasing the fuels for consumption and their significance for emissions.

Process analysis

7. The verification of the data and information submitted shall, where appropriate, be carried out on the site of the regulated entity. The verifier shall use spot-checks to determine the reliability of the reported data and information.

Risk analysis

8. The verifier shall submit all the means through which the

fuels are released for consumption by the regulated entity to an evaluation with regard to the reliability of the data on the overall emissions of the regulated entity.

9. On the basis of this analysis the verifier shall explicitly identify any element with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those elements with a high risk of error and the abovementioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the regulated entity with a view to minimising the degree of uncertainty.

Report

11. The verifier shall prepare a report on the validation process stating whether the report pursuant to regulation 13 is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to regulation 13 is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

Minimum competency requirement for the verifier

12. The verifier shall be independent of the regulated entity, carry out his activities in a sound and objective professional manner, and understand:

(a) the provisions of these regulations, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1) of Directive 2003/87/EC and guidance adopted by the Authority pursuant to these regulations;

(b) the legislative, regulatory, and administrative requirements relevant to the activities being verified; and

(c) the generation of all information related to all the means through which the fuels are released for consumption by the regulated entity, in particular, relating to the collection, measurement, calculation and reporting of data.

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